

REMARKS

Applicant respectfully requests reconsideration. Claims 1-48 and 53-57 were previously pending in this application. By this amendment, Applicant is canceling claims 1-4, 13-17, and 28-46 without prejudice or disclaimer. Claims 5-7, 9-11, 18-24, 26, 48, and 53-57 have been amended. As a result, claims 5-12, 18-27, and 47-57 are pending for examination with claims 5, 18, 26, 47, 48, and 53 being independent claims.

Amendments to claim 5 constitute the incorporation of subject matter recited in cancelled claims 1-4. The wording of the recitation previously present in claim 4 has been amended, in a non-narrowing fashion, upon incorporation into claim 5 to recite that “the scene or illustration comprises at least one visible feature comprising a tree or portion thereof, a branch or portion thereof, a bush or portion thereof, a leaf or portion thereof, a flower or portion thereof, a berry, grass, a rock or portion thereof, and/or moss.” Previously, these limitations had been expressed in Markush format. Because of unduly narrow and exclusionary claim constructions applied to Markush limitations by the Federal Circuit in recently decided cases, Applicant desires to eliminate the Markush format from the pending claims to avoid such an unduly narrow and exclusionary claim construction should the claims be litigated. It is believed that the amended language would be abundantly clear and readily understandable by those of ordinary skill in the art. Analogous amendments have been made to the language of canceled claim 17, as now incorporated into claim 18, claim 26, and claim 56. Amendments to claim 18 constitute the incorporation of subject matter recited in cancelled claims 13-17. Amendments to claims 6, 7, 9-11, and 19-24 are simply changes in dependency to account for the cancellation of claims 1-4 and 13-17. In addition, independent claims 26, 48, and 53 have been amended to positively recite, in the body of the claim, that the fabric is a camouflage fabric to make clear that this limitation, previously recited in the preambles of these claims, should be given patentable weight. Dependent claims 54-57 have been amended in a non-narrowing fashion to derive proper antecedent support from the amended language of independent claim 53.

No new matter has been added.

Allowable Subject Matter

Claims 5, 18, and 27 were indicated as being objected to as being dependent upon a rejected base claim, but as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 47 is allowed.

Rejections Under 35 U.S.C. §103

1. Claims 1-4, 6-17, and 19-25 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,669,818 to Stark in view of U.S. Patent No. 3,916,823 to Halloran.

Applicant does not concede that there would have been any motivation to combine Stark and Halloran as suggested in the Office Action, or that the combination even if made teaches or suggests all of the limitations of any of the rejected claims, or the Patent Office's characterization of certain limitations of the rejected claims identified in the Office Action as relating to non-functional ornamentation and mere design choice, or indeed to the merits of any other of the points of objection raised in the Office Action.

However, regarding independent claims 1 and 13, the Applicant has chosen, solely for the purpose of expediting allowance of the application and issuance of a patent thereon, to cancel these claims without prejudice or disclaimer. Accordingly, the present basis for rejection of independent claims 1 and 13 has been rendered moot.

Claims 5 and 18, which were not rejected on the present basis, have been rewritten in independent form to incorporate limitations recited in the claims from which they were previously dependent, as described previously. Accordingly, these claims should now be in condition for allowance. Claims 6-12, which depend from claim 5 as amended, and claims 19-25, which depend from claim 18 as amended should also now be in condition for allowance.

Accordingly, withdrawal of this rejection is respectfully requested.

2. Claims 26, 48, and 53-57 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,669,818 to Stark in view of U.S. Patent No. 3,916,823 to Halloran.

Again, Applicant does not concede that there would have been any motivation to combine Stark and Halloran as suggested in the Office Action, or that the combination even if made teaches or suggests all of the limitations of any of the rejected claims. Applicant notes, however, that the Patent Office concedes that the combination of Stark and Halloran fails to teach the combination of features characterizing a camouflage fabric. The Office Action appears to indicate that the recitations of a camouflage fabric in the preambles of the presently rejected independent claims are not given patentable weight as being reflective of merely an intended use. Accordingly, solely for the purpose of obviating the rejection and expediting allowance and issuance of the application, Applicant has amended each of independent claims 26, 48, and 53 to positively recite in the body of each claim that the fabric is a camouflage fabric (i.e. possesses structure features resulting in the functional characteristic of a fabric useful for camouflage). Accordingly, it is believed that these claims should now be in condition for allowance as should claims 54-57, which depend from claim 53 as amended.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

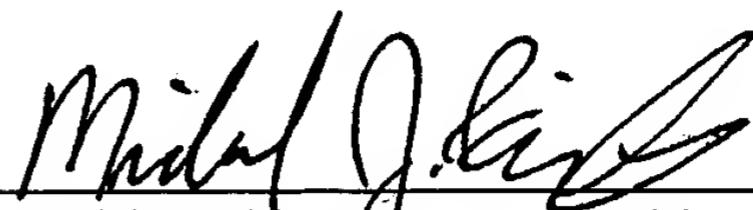
Serial No.: 09/666,813
Conf. No.: 9117

- 11 -

Art Unit: 1771

Respectfully submitted,
Kevin R. Crompton, Applicant(s)

By:



David Wolf, Reg. No. 17,528

Michael J. Pomianek, Ph.D., Reg. No.
46,190

Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

Docket No.: M0459.70018US00
Date: February 22, 2005
x02/22/05x